

# LEGAL DEPARTMENT ANNUAL REPORT - 2005

## I. OVERVIEW

In 2005 the City of South Bend Legal Department continued its role of providing support, advice and representation to various units of the City of South Bend and representing the City in litigation in state and federal courts, and before administrative agencies.

During 2005, the nine attorneys of the City Attorney's staff provided assistance to all of the departments and divisions within the City of South Bend, together with various City and City-related boards, commissions, and authorities, including the Alcoholic Beverage Board, the Human Rights Commission, the Board of Zoning Appeals, the Redevelopment Commission, Redevelopment Authority, Board of Public Safety, Board of Public Works, Park Board, the Century Center Board, the Historic Preservation Commission, and the South Bend Common Council.

The Legal Department provides advice to each of these departments and entities with respect to the conduct of their business under local, state, and federal law so that each entity will operate in compliance with all legal requirements. The department also represents the City in disputes in state and federal court and before administrative agencies in order to protect the City's interests when the City has been named as a defendant in lawsuits or administrative actions or to advance the City's interests when the City has a claim against another person or entity and litigation is the only way to achieve the goal of advancing and protecting the City's interests.

The department also engages in negotiations with outside parties to establish the City's role in various projects and undertakings and prepares a variety of documents to memorialize the relationships which have been established to provide the framework for an ongoing relationship.

In 2005 the Department continued operation of a second year of the South Bend Local Government Academy to better communicate the role and operations of the City to local community leaders and the public at large.

Two new attorneys joined the Legal Department staff in 2005: Jeff Sanford who is responsible for prosecuting ordinance violations and for the City's defense under the self-insurance liability program, and Shawn Peterson who assists in Economic Development, Public Works and who represents the Historic Preservation Commission. Shawn replaced John Livingston who is fondly remembered and sorely missed.

## II. SELF-INSURANCE

The department managed the City's self-insurance liability program, paying out \$813,481.69 in claims against the City in 2005. If the risks covered by the self insurance program had been fully insured, the estimated premiums would have been in the \$2.5 Million to \$5 Million range. The cost savings are thus substantial although the amount of payout varies from year to year. The history of the City's liability self-insurance cost is as follows:

Year	Number of New Claims Filed	Claims Paid <sup>1</sup>
1997	268	\$327,668.29
1998	249	\$411,221.79
1999	343	\$446,104.48
2000	245	\$1,102,372.60

---

<sup>1</sup> Claims paid historical amounts for the years 1997 through 2000 are slightly lower than the amounts shown on the 2005 Annual Report. "Other Contractual" amounts were included in last year's report for those years and have been excluded this year for consistency of reporting.

2001	352	\$648,242.73
2002	220	\$341,655.19
2003	209	\$332,005.11
2004	220	\$330,949.26
2005	187	\$813,481.69

Claims paid in 2005 were higher than average because of the resolution of several claims older than five (5) years. New claims continue to decline in number demonstrating effective City-wide departmental leadership in reducing risks of operations.

The claims review process, in conjunction with the defense, negotiation, and settlement process, assists City departments in identifying areas of risk and engenders discussion and action on the best ways to manage that risk.

### **III. PROSECUTION OF ORDINANCE VIOLATIONS**

The Legal Department also prosecutes claims in the local courts for violations of City ordinances, occasionally through the injunction process, but most often through civil actions to collect fines. During 2005, \$193,846.25 was collected for ordinance violations and other miscellaneous accounts for various departments. The history of total collections is as follows:

1998	\$70,797.92
1999	\$75,446.00
2000	\$78,713.17
2001	\$114,053.78
2002	\$122,226.37
2003	\$160,036.66
2004	\$161,466.00
2005	\$193,846.25

A breakdown of the history for the collection of ordinance violations, which include code enforcement, noise violations, parks infractions and any other miscellaneous violation of City ordinances, and parking ticket violations is as follows:

	<u>Ordinance Violations</u>	<u>Parking Tickets</u>
2000	\$30,544.17	\$17,866.00
2001	\$70,737.27	\$15,703.00
2002	\$82,005.55	\$17,168.00
2003	\$96,008.56	\$13,736.65
2004	\$92,065.00	\$25,122.00
2005	\$91,060.23	\$21,839.00

### **IV. LEGISLATIVE SERVICES**

Legislative work of the department includes preparation of proposed ordinances to be submitted to the South Bend Common Council, review of proposed state legislation pending before the Indiana General Assembly, and monitoring of proposed federal legislation which could affect municipal operations.

### **V. TRAINING ON LEGAL ISSUES**

The Legal Department also provides information and training to City employees on changes in the law. Members of the City Attorney's staff have provided training to Uniformed Officers and Civilian Volunteer Officers of the South Bend Police Department, the South Bend Human Rights Commission, and the Department of Code Enforcement with respect to various issues.

The Legal and Code Enforcement Departments also hosted officials from the City of Hammond and shared information to assist them in organizing and providing legal support for a code enforcement department.

The Department also provided assistance to the Airport Authority in training taxi drivers and company owners and provided teaching at two classes at the Forever Learning Institute, on the work of the City Legal Department and some other departments within the City.

## **VI. LOCAL GOVERNMENT ACADEMY**

The Legal Department continued its ten-week Local Government Academy in 2005 to introduce residents to City operations and encourage them to participate in local government. City employees served as the faculty and the "classroom" traveled to the Street, Police and Fire Departments, O'Brien Center, Century Center, the Morris Performing Arts Center, the Palais Royale and Human Rights Office, the Near Westside Partnership Center, and the Common Council Chambers, where class members presented an ordinance at a mock Council meeting. The class also took a bus tour of several redevelopment, public works and neighborhood projects.

Attendance at the Academy has been as follows:

<u>Session</u>	<u>Number of Students</u>
Fall 2004	25
Winter 2005	24
Fall 2005	23

The Academy showed people parts of the City they had never seen and how the City is working to serve them. The next session began January 26, 2006.

## **VII. LITIGATION**

At the end of 2005, the Legal Department was involved in the following litigation on behalf of the City of South Bend:

<u>Litigation Area</u>	<u>City as Plaintiff</u>	<u>City as Defendant</u>	<u>Pending Claims</u>
Code Enforcement	58	4	
Injunctions	22		
Animal Warrants	64		
Police Actions		9	
Vehicles Accidents		6	5
Personal Injury (not vehicle)		10	1
Discrimination		4	1
Indiana Civil Rights Commission	1		
Property Damage		1	
Administrative Appeals		1	
Utility Rates		2	
Foreclosures	3	165	
Bankruptcy	1		
Miscellaneous	1	4	1
Total	150	205	8

Minor miscellaneous matters not included in this table are infraction cases in Small Claims Court and Code Enforcement collections in Small Claims Court.

The Legal Department also participated in eleven (11) mediation sessions in 2005 in an attempt to resolve disputes in litigation. Eight (8) of these mediation sessions resulted in settlement of the disputes.

Department attorneys also participated in the following administrative hearings in 2005:

<u>Agency</u>	<u>Number of Hearings</u>
Human Rights Commission	12
Code Enforcement	70
License Appeals	20
Board of Safety - Disciplines	4
Unemployment Hearings	3
Personnel - 3 <sup>rd</sup> Step Grievances	1
Board of Zoning Appeals	12

In 2005, the Legal Department was active in pursuing the drug and disorderly house ordinance. A total of 223 Notices to Abate under the Drug House Ordinance and 87 Notices to Abate under the Disorderly House Ordinance were sent to owners/occupants in the City. Eight of these notices resulted in the filing of injunction lawsuits.

Major litigation concluded during 2005 included the challenge to the City's Adult Business Ordinance, the Police Department overtime case, and the Richard Alexander case which was affirmed on appeal in early 2006. Significant litigation in process included the Roseland water/sewer dispute and the Clay utility customers refund claim. The Department also began legal proceedings to establish a receivership to allow the rehabilitation of the Rushton Building by Historic Landmarks of Indiana.

### **VIII. TRANSACTIONAL ASSISTANCE**

During 2005, Department attorneys prepared approximately 340 agreements, resolutions and documents conveying real estate interests in transactions in which the City was involved, primarily for the Department of Community and Economic Development.

### **IX. NEGOTIATIONS**

Negotiations during 2005 involving department attorneys included collective bargaining with FOP Lodge 36, settlement negotiations and mediation to resolve pending claims and litigation, and project term negotiations to assist economic development activity.

### **X. CIVIC AND PROFESSIONAL PARTICIPATION BY STAFF ATTORNEYS**

During 2005, several of the attorneys in the Legal Department participated in activities which contributed to the City's presence and to their own professional development. These activities include the IACT Legislative Committee, St. Joseph County Bar Association Board of Governors; Character and Fitness Committee of the Indiana Supreme Court; Pro Bono Committee and Bench and Bar Committee of the St. Joseph County Bar Association; Robert A Grant Inn of Court; State Bar Association American Citizenship Committee; Indiana Municipal Lawyers Association; the St. Joseph County Bar Association Local Practice Seminar Planning Committee, and the Indiana Association of Cities and Towns.